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CITATIONS

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Cases—Continued

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 557

UNITED STATES OF AMERICA, APPELLANT

v.

INTERNATIONAL MINERALS AND CHEMICAL CORPORATION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

BRIEF FOR THE UNITED STATES

OPINION BELOW

The memorandum of decision and order of the district court (App. 7–8) is not yet reported.

JURISDICTION

On May 11, 1970, the United States District Court for the Southern District of Ohio granted appellee's pretrial motion to dismiss the five-count information charging violations of 18 U.S.C. 834 by noncompliance with a regulation, 49 C.F.R. 173.427, requiring a shipper offering for transport any dangerous article to describe the article on the shipping papers by designated name and classification. The Court found that "knowledge of violating the above I.C.C. regulation is

an essential element of the crime charged" and that the government failed to allege such knowledge (App. 7–8).

On June 8, 1970, the government filed a notice of appeal to the United States Court of Appeals for the Sixth Circuit pursuant to 18 U.S.C. 3731. Upon further consideration, the government later moved to certify the case to this Court, as that Section provides, on the ground that the appeal should have been taken directly to this Court. The court of appeals did certify the appeal and this Court noted probable jurisdiction on January 11, 1971 (App. 15).

This Court has jurisdiction over this case pursuant to the first paragraph of 18 U.S.C. 3731, since the district court's dismissal of the information was based upon its construction of the phrase "knowingly violates" in the underlying statute, 18 U.S.C. 834. *United States* v. *Fabrizio*, 385 U.S. 263.[1]

QUESTION PRESENTED

Whether 18 U.S.C. 834, imposing criminal liability upon anyone who "knowingly violates" authorized regulations dealing with the transportation of hazardous and dangerous materials, requires actual knowledge of the regulations and a specific intent to violate them.

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[1] The 1970 amendment to the Criminal Appeals Act (18 U.S.C. 3731), providing that all appeals from dismissals of indictments or informations must be taken to the courts of appeals, 84 Stat. 1890, is not applicable to this case since the amendment is effective only as to cases begun in the district courts prior to its effective date, January 2, 1971. See *United States* v. *Jorn*, No. 19, this Term, decided January 25, 1971, slip op. nn. 1, 6.

STATUTES AND REGULATION INVOLVED

18 U.S.C. 834(a) provides:

> The Interstate Commerce Commission shall formulate regulations for the safe transportation within the United States of explosives and other dangerous articles. including radioactive materials, etiologic agents, flammable liquids, flammable solids, oxidizing materials, corrosive liquids, compressed gases, and poisonous substances, which shall be binding upon all carriers engaged in interstate or foreign commerce which transport explosives or other dangerous articles by land, and upon all shippers making shipments of explosives or other dangerous articles via any carrier engaged in interstate or foreign commerce by land or water.

18 U.S.C. 834(f) provides:

> Whoever knowingly violates any such regulation shall be fined not more than $1,000 or imprisoned not more than one year, or both; and, if the death or bodily injury of any person results from such violation, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

49 C.F.R. 173.427 provides in part:

> (a) Each shipper offering for transportation any dangerous article subject to the regulations in this chapter, shall describe that article on the shipping paper by the shipping name prescribed in § 172.5 of this chapter and by the classification prescribed in § 172.4 of this chapter * * *. Abbreviations must not be used. * * *

STATEMENT

On March 2, 1970, the United States filed a five-count information against appellee (a New York corporation which manufactures and ships various chemicals, fertilizers and other materials) alleging violations of the Transportation of Explosives Act, specifically 18 U.S.C. 834 (App. 3–5). A typical count (count 3) charged (App. 4) that:

> On or about April 15, 1969, at Lockland in the State and Southern District of Ohio, Western Division, International Minerals and Chemical Corporation, defendant, a corporation, a shipper of property in interstate commerce, and as such shipper subject to the regulations prescribed by United States Department of Transportation [2] applying to shipments of explosives and other dangerous articles made by way of common, contract, and private carriers of property by public highways (49 C.F.R. 171 through 179), did offer for transport in interstate commerce from Lockland, Ohio, to Louisville, Kentucky, to Ecoff Trucking, Inc., a shipment of 1 truckload, Sulfuric Acid and did knowingly fail to show on the shipping papers the proper name, Sulfuric Acid, and the required classification of said property, to wit, Corrosive Liquid, in violation of 49 C.F.R. 173.427 (18 U.S.C. 834).

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[2] The functions, duties, and powers of the Interstate Commerce Commission to regulate transportation of hazardous materials were transferred to the Secretary of Transportation in section 6(e)(4) of the Department of Transportation Act, 80 Stat. 937, 49 U.S.C. (Supp. V) 1655(e)(4).

The other counts are substantially the same, except that counts 1, 2, and 4 allege only that the defendant knowingly failed to show the required classification on the shipping papers.

Appellee filed a pretrial motion to dismiss the information pursuant to Rule 12(b)(2), F.R. Crim. P. While admitting "technical violations of the regulation" (App. 13), appellee contended that the information was insufficient because it alleged only "knowing failure" to show the proper designations on shipping papers and not a "knowing violation" of the "regulation." The district court agreed. Relying upon this Court's opinion in *Boyce Motor Lines, Inc.* v. *United States,* 342 U.S. 337, and certain lower federal court decisions, the court ruled that knowledge of the regulation itself, in addition to deliberate performance of acts constituting a violation, "is an essential element of the crime charged" (App. 8). It therefore granted the motion, dismissing the information for failure to allege such knowledge (*Ibid.*).

SUMMARY OF ARGUMENT

The district court, in this case, dismissed an information charging appellee with violations of 18 U.S.C. 834, which makes it a crime to "knowingly violate" regulations of the Department of Transportation for interstate transportation of explosives and other dangerous materials. The information was dismissed because it failed to allege that the defendant-shipper had knowledge of the regulation which allegedly was violated. The effect of the district court's decision will

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thus be to require the government, at least with respect to statutes prohibiting knowing violations of regulations, to allege and prove knowledge of the terms of regulations and intent to violate them.

This result is squarely at odds with the fundamental principle of our jurisprudence that ignorance of a law does not excuse its violation. There is no basis for concluding that Congress intended to make an exception to this principle by use of the word "knowingly" in this or any other regulatory statute. Rather, that term merely signifies that the government must prove the existence of the traditional element of *scienter*—that a defendant acted or failed to act deliberately or consciously, rather than inadvertently, with knowledge of the facts and circumstances but not necessarily knowledge of the law which made his conduct illegal.

The court below relied upon this Court's decision in *Boyce Motor Lines* v. *United States,* 342 U.S. 337. Its reliance was misplaced. The question of whether knowledge of the existence or terms of a regulation under Section 834 was not directly before the Court in that case. The Court's discussion of the intent requirement of the statute, however, clearly demonstrates that it considered traditional *scienter* to be the only requisite mental element of the offense. Nor is there support in any other decision of this Court for the action of the district court in this case.

The legislative history of the 1960 amendment to the Transportation of Explosives Act does not suggest that Congress intended to make an exception to the

principle that ignorance of the law is no excuse by requiring the government to prove a defendant's knowledge of the regulations. Congress did, at the time, consider changing the "knowingly" requirement and it was initially argued that the proposed change would insure that the government did not bear the burden of proving such knowledge. But the fact that the present terminology was retained does not imply endorsement by Congress of the proposition that knowledge of the regulations is an element of the offense. Congress was aware of the decision in *Boyce* and of lower court opinions which had read that decision to make knowledge of the regulations an element of the offense. In the last analysis, however, it accepted the proper interpretation of the *Boyce* opinion—that it did no more than recognize the traditional *scienter* requirement. There was, consequently, no reason for Congress to seek to clarify its intent by changing standard terminology used in this provision, as well as many others.

ARGUMENT

KNOWLEDGE OF THE REGULATION, AS DISTINCT FROM KNOWLEDGE OF THE ACTS DONE, IS NOT AN ELEMENT OF THE OFFFENSE UNDER 18 U.S.C. 834

A. THE DISTRICT COURT BELOW ERRONEOUSLY CONCLUDED THAT USE OF THE WORD "KNOWINGLY" IN THIS SECTION REQUIRES AN EXCEPTION TO THE PRINCIPLE THAT IGNORANCE OF THE LAW DOES NOT EXCUSE

1. The fundamental principle that "ignorance of the law will not excuse" is "deep in our law." *Lambert*

v. *California*, 355 U.S. 225, 228. It is well established that lack of knowledge of the existence or provisions of a criminal statute need not be proved by the prosecution and is not a defense in a trial for serious crimes against person or property, such as murder, robbery or rape. The principle applies equally with respect to violations of laws which are essentially regulatory in character.[3] As Mr. Justice Holmes explained in *Ellis* v. *United States*, 206 U.S. 246, 257, which involved a conviction under a statute punishing persons who "intentionally violate" limitations on the hours of work for government laborers and mechanics:

> If a man intentionally adopts certain conduct in certain circumstances known to him, and that conduct is forbidden by the law under those circumstances, he intentionally breaks the law in the only sense in which the law considers intent. * * *

There is, in short, a presumption, ordinarily conclusive, of knowledge of the law. Perkins, *Criminal Law* (1st ed., 1957) 808–809.[4] The justification for this

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[3] *Lambert* v. *California*, *supra*, represents an exception. The Court held invalid a city ordinance which imposed criminal penalties on any convicted person who failed to register as such after remaining more than five days in Los Angeles or coming into the city more than five times in a month. This Court held that the ordinance was unconstitutional as applied to someone who had no actual knowledge of its provisions and whose "conduct * * * [was] wholly passive" and not of a type which would "alert the doer to the consequences of his deed." 355 U.S. at 228. In the present case, the prohibited conduct is not passive and, as shown below, shippers have an affirmative obligation to acquaint themselves with the regulations. See p. 10, *infra*, n. 5.

[4] Where guilt of a crime depends upon a certain mental state with respect to a law other than that defining the crime, a

presumption is a sensible one: "[t]o admit the excuse at all would be to encourage ignorance where the lawmaker has determined to make men know and obey," Holmes, *The Common Law* (Howe ed. 1963) 41. The district court has rejected this fundamental principle with respect to the statutory language, "knowingly violates * * * [a] regulation." For its decision requires the government to allege and prove that the defendant knew the terms of the regulation and specifically intended to violate it by his conduct.

a. The district court's decision is based upon a misinterpretation of this Court's opinion in *Boyce Motor Lines, Inc.* v. *United States,* 342 U.S. 337. In that case, petitioner was charged, under Section 834's predecessor (which is identical to the present statute so far as here pertinent), with violating a regulation requiring drivers of motor vehicles transporting any explosive or inflammable substance to "avoid, so far as practicable, and, where feasible, by prearrangement of routes, driving into or through congested thoroughfares * * *." 342 U.S. at 339. The indictment alleged that petitioner had routed its trucks, which carried an inflammable liquid, through Holland Tunnel despite the availability of safer routes, and that petitioner "well knew" this to be in violation of the regulation. *Ibid.* The question in *Boyce* was

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mistake with respect to the other law generally negates liability. For example, the crime of larceny requires an intent to appropriate property of another. Demonstration of "a misunderstanding of property law," leading to a "bona-fide belief" that the item taken belonged to the defendant, would be a defense. Perkins, *supra*, at 822.

whether the regulation was unconstitutionally vague; the *scienter* element of the statute was not directly at issue. In concluding that the regulation was not vague, however, the Court relied, in part, upon the effect of the intent requirement.

> The statute punishes only those who knowingly violate the Regulation. This requirement of the presence of culpable intent as a necessary element of the offense does much to destroy any force in the argument that application of the Regulation would be so unfair that it must be held invalid. That is evident from a consideration of the effect of the requirement in this case. To sustain a conviction, the Government not only must prove that petitioner could have taken another route which was both commercially practicable and appreciably safer (in its avoidance of crowded thoroughfares, etc.) than the one it did follow. It must also be shown that petitioner knew that there was such a practicable, safer route and yet deliberately took the more dangerous route through the tunnel, or that petitioner willfully neglected to exercise its duty under the Regulation to inquire into the availability of such an alternative route. [342 U.S. at 342; footnotes omitted.] [5]

[5] The Court noted that the officers, agents and employees of every motor carrier concerned with the transportation of explosives and dangerous articles are required by regulation (then 49 C.F.R. (1949 ed.) 197.02, presently 49 C.F.R. 397.02) to "become conversant" with the above and other regulations applying to such transporation. 342 U.S. at 342 n. 15. The provisions of the present statute, 18 U.S.C. 834(d), further require publication of penal regulations and a subsequent ninety-day waiting period before they become effective.

It is plain from the quoted passage that the Court in *Boyce* was not saying that knowledge of the existence or terms of the regulation—*i.e.*, knowledge of the law—is an element of the offense under 18 U.S.C. 834. Rather, the discussion of the element of culpable intent focused only on the traditional requirement of proof that the defendant did the act for which he is to be punished consciously and not inadvertently—*i.e.*, with knowledge of the fact that a safer route was available or the equivalent, a willful failure to consider whether that fact existed or not.

As Mr. Justice Jackson, dissenting on the vagueness issue, commented:

> [T]he knowledge requisite to knowing violation of a statute is factual knowledge as distinguished from knowledge of the law. I do not suppose the Court intends to suggest that if petitioner knew nothing of the existence of such a regulation its ignorance would constitute a defense. [342 U.S. at 345.]

If the Court had intended to recognize an exception to the basic principle that ignorance of the law does not excuse, it would have done so in clear terms. *Cf. Lambert* v. *California*, 355 U.S. 225, 228; *Screws* v. *United States*, 325 U.S. 91, 104–105.

b. The proper construction of the requirement of knowing violation of a regulation under 18 U.S.C. 834 was recently articulated in *Texas-Oklahoma Express, Inc.* v. *United States*, 429 F. 2d 100 (C.A. 10). The case involved a regulation forbidding a carrier from leaving a motor vehicle transporting certain classes of explosives "unattended at any time during

[the] course of transportation." After discussing *Boyce* and other cases relied on below, the court concluded simply:

> [I]t is necessary to show but one step—that the trailer was intentionally left unattended, and not two steps—that a violation of the Regulation was intended and the truck was left unattended. * * * [429 F. 2d at 103.]

It is true that several lower courts, subsequent to *Boyce*, imposed a requirement under this statute of proof of specific intent to violate a known regulation, rather than simply proof of intent to commit the acts constituting the offense. *E.g., United States* v. *Chicago Express*, 235 F. 2d 785 (C.A. 7); *St. Johnsbury Trucking Co.* v. *United States*, 220 F. 2d 393 (C.A. 1). But it remains that there is no support in *Boyce* or any other decision of this Court for such an exception to established principles of criminal responsibility.[6]

2. Courts which have imposed a requirement of proof of knowledge of a regulation and specific intent to violate it may have been influenced by the circumstance that 18 U.S.C. 834 does not itself specify the acts which constitute a violation. Rather, like

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[6] Seven years after *Boyce*, the Court, in *United States* v. *A&P Trucking Co.*, 358 U.S. 121, held that a partnership can "knowingly violate" the regulations under the statute. The information charged simply that "defendant did knowingly transport by motor vehicle more than 2500 pounds * * * of methanol" without the vehicle's being properly marked (Transcript of Record, No. 32, O.T. 1958, p. 23). The Court affirmed the conviction, without discussing the *scienter* requirement, despite the fact that knowledge of the regulation was not alleged in the indictment.

many statutes, it merely refers to "regulations," delegating to the administrative agency the responsibility to detail the factual situations to which the statute will apply.[7] Thus, Judge Magruder, concurring in *St. Johnsbury, supra,* stated:

> If a statute provides that it shall be an offense "knowingly" to sell adulterated milk, the offense is complete if the defendant sells what he knows to be adulterated milk, even though he does not know of the existence of the criminal statute, on the time-honored principle of the criminal law that ignorance of the law is no excuse. But where a statute provides, as does 18 U.S.C. § 835, that whoever knowingly violates a regulation of the Interstate Commerce Commission shall be guilty of an offense, it would seem that a person could not knowingly violate a regulation unless he knows of the terms of the regulation and knows what he is doing is contrary to the regulation. * * * [220 F. 2d at 398.]

Judge Magruder's opinion seems to imply that, if the statute in this case itself stated the prohibition that is in fact stated in the incorporated regulation, then there would be a "knowing" violation notwithstanding ignorance of the statute's terms. But there is no principle of statutory interpretation or jurisprudence that

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[7] Among statutes similarly imposing criminal penalties for "knowing" or "willful" violations of rules or regulations are: 15 U.S.C. 717t (transportation and sale of natural gas); 16 U.S.C. 825o (public utilities supplying electric energy); 43 U.S.C. 1334 (conservation of natural resources of the Outer Continental Shelf); and 47 U.S.C. 502 (wire or radio communication).

gives "knowing" varying meanings depending on whether a statute establishes a general prohibition encompassing numerous factual situations which are detailed in regulations, or instead itself describes each set of circumstances to which its sanctions will apply.[8]

There is no issue here of the propriety of the delegation of the power to establish regulations or of the validity of the particular regulation which was allegedly violated. There is consequently no reason, we submit, why the term "regulations" should not be treated simply as a shorthand designation for the specific descriptions of acts and omissions which constitute violations of the statute. And when the statute is viewed in this manner, we contend, it is even clearer that use of the language "knowingly violates * * * [a] regulation" does not signal an exception to the rule that ignorance of the law does not excuse.

B. CONGRESS HAS NOT MADE KNOWLEDGE OF THE REGULATIONS AND A SPECIFIC INTENT TO VIOLATE THEM ELEMENTS OF THE OFFENSE

1. Congress has "wide latitude" to determine what acts will be treated as criminal and to define the mental element which must be proved for conviction. *Lambert* v. *California,* 355 U.S. 225, 228. In certain "public welfare" statutes, Congress has eliminated the element

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[8] Sections 832 and 833 of the same statute, 18 U.S.C. 832, 833, dealing respectively with transportation of explosives and other dangerous articles and marking of packages containing them, specify the proscribed conduct in some detail, although they are, to a degree, dependent upon regulations to define their prohibitions. Both contain the "knowingly" requirement.

of *scienter* entirely, imposing absolute criminal liability for prohibited acts or omissions whether done deliberately or inadvertently. See, e.g., *Morissette* v. *United States,* 342 U.S. 246; *United States* v. *Dotterweich,* 320 U.S. 277; *United States* v. *Balint,* 258 U.S. 250; *Shevlin-Carpenter Co.* v. *Minnesota,* 218 U.S. 57.

"Public welfare" statutes compose the broad class of essentially regulatory measures which are necessary in a complex, industrial society. *Morissette* v. *United States, supra,* 342 U.S. at 253–254. They include, for example, laws prohibiting sale of impure or adulterated foods or drugs and regulations regarding traffic and motor vehicles. See Sayre, *Public Welfare Offenses,* 33 Col. L. Rev. 55 (1933); Perkins, *Criminal Law* 692–710. The purpose of punishing inadvertent acts or omissions in violation of these statutes is to increase compliance with regulations by placing "the burden of acting at hazard upon a person otherwise innocent but standing in responsible relation to a public danger." *United States* v. *Dotterweich, supra,* 320 U.S. at 281.

All public welfare statutes do not, however, impose absolute liability. Whether they do, as this Court has said, is "a question of legislative intent." *United States* v. *Balint, supra,* 258 U.S. at 252. In *Balint* and *United States* v. *Behrman,* 258 U.S. 280, this Court inferred from the lack of any reference to a mental element in a statute forbidding sales of narcotics drugs that Congress intended to impose absolute liability. Similarly, if there were no reference to intent in 18 U.S.C. 834, the appropriate interpretation would be

that the statute punished any conduct violating the regulations governing transport of explosives, regardless of whether it was deliberate or inadvertent.[9]

The addition of "knowingly" in a public welfare statute such as the present one thus has the effect of adding an element of intent to commit the acts constituting the offense which would otherwise not be required for conviction.[10] The use of that word cannot, however, reasonably be said also to have added the further requirement of proof that the defendant know the law and specifically intend to violate it. Congress undoubtedly has the power to require proof of such an intent, and in several statutes it has explicitly made lack of knowledge of statutes or regulations a defense.[11] But it has not done so expressly here and there is no warrant for reading such a double *scienter* requirement into its simple use of the word "knowing."

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[9] In *Morissette*, by contrast, this Court construed silence regarding intent in a federal larceny statute, adopting "a concept of crime already so well defined in common law", as indicating an intent to incorporate the traditional common law requirement of general intent. 342 U.S. at 262. Since the statute here is concerned with regulatory matters and has no common law antecedent, the present case is more akin to *Balint*

[10] One possible explanation for the inclusion of the element of intent in 18 U.S.C. 834 is reluctance to impose penalties as serious as a year's imprisonment (or ten, if anyone is physically harmed as a result of the violation) for an act which is inadvertent. Cf. *Morissette* v. *United States*, *supra*, 342 U.S. at 256.

[11] See, *e.g.*, 15 U.S.C. 79z–3 (public utility holding companies) and 15 U.S.C. 80a–48 (investment companies), providing penalties for violation of any "provision of" the statute or "any rule, regulation or order," except that:

> "no person shall be convicted under this section for the violation of any rule, regulation, or order if he proves that

2. Congress has included the requirement of proof that prohibited acts or omissions be done "knowingly or willfully" in a number of "public welfare" statutes.[12] In considering such statutes, this Court and most lower federal courts have interpreted the term "knowingly" as requiring only proof of intent to do the prohibited act, not proof of knowledge of the law. See *e.g., Ellis* v. *United States,* 206 U.S. 246, discussed *supra,* p. 8; *United States* v. *Illinois Central R. Co.,* 303 U.S. 239; *Corsicana National Bank* v. *Johnson,* 251 U.S. 68.[13]

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he had no actual knowledge of such rule, regulation, or order."

The National Commission on Reform of Federal Criminal Laws (the Brown Commission), has proposed generally to make "a person's good faith belief that conduct does not constitute a crime * * * an affirmative defense if he acted in good faith reliance" on certain official interpretations of the law. Final Report, A Proposed New Federal Criminal Code, § 610, pp. 52–53. Cf. American Law Institute, Model Penal Code (Proposed Official Draft, 1962) § 2.04.

[12] The working papers of the Brown Commission contain a partial list of the numerous regulatory criminal statutes employing these or similar terms. See Working Papers, Vol. I, pp. 409–417. The Commission has proposed uniform provisions on punishment for violation of such offenses to replace the "staggering array" of differently phrased *scienter* requirements now contained in the United States Code. See Final Report, Proposed New Federal Criminal Code, §§ 302, 1006, pp. 27–30, 74–76; Working Papers, Vol. I, pp. 118–135. The provisions establish increasing penalties depending upon whether liability is absolute or depends upon some form of intent. Cf., American Law Institute, Model Penal Code (Proposed Official Draft, 1962), §§ 2.02, 2.05.

[13] The petitioner in *Morrissette, supra,* in fact, argued that a "knowing" conversion required proof of knowledge of the law as to conversion and specific intent to violate it. (Brief for

In *United States* v. *Illinois Central R. Co., supra,* the Court considered a statute, 45 U.S.C. 73, providing penalties for "[a]ny railroad * * * [which] knowingly and willfully fails to comply with the provisions" relating to the length of time during which cattle could be confined in freight cars. The alleged violation was simply that respondent had "knowingly and willfully" confined cattle in a car for a specified, excessive period of time; there was no allegation that respondent knew the terms of the regulation which allegedly was violated. (Transcript of Record, No. 352, O.T. 1937, p. 4). With respect to the word "knowingly," the Court held that:

> The penalty is not imposed for unwitting failure to comply with the statute [citations omitted]. But in this case, the respondent knew when the permissible period of confinement would expire, brought the car to [its] destination, and, within the time period allowed, placed it for unloading. By allowing the 36 hours to expire, it "knowingly" failed to comply with the statute. [303 U.S. at 242.] [14]

Petitioner, No. 12, O.T. 1951, pp. 17–20; see Brief for the United States, p. 13). The Court rejected that argument (342 U.S. at 270–271), saying:

> [K]nowing conversion requires more than knowledge that defendant was taking property into his possession. He must have had knowledge of the facts, though not necessarily the law, that made the taking a conversion. * * *

[14] The Court held that "willfully" in this statute meant either intentional disregard for the law or indifference to its requirements. It concluded that this element was satisfied in this case by proof of the negligence of one of respondent's employees. This definition of willfulness has not been adopted for all

Similarly, a number of lower federal courts have found that 49 U.S.C. 322(a), which states that "[a]ny person knowingly and willfully violating any * * * rule, regulation, requirement, or order" dealing with the operation of interstate motor carriers "for which a penalty is not otherwise * * * provided" shall be subject to a fine, does not require proof of specific criminal intent.[15]

These analogous decisions reinforce our interpretation of the term "knowingly" in Section 834 as requiring only proof of an intentional act or omission and not also knowledge of the regulation and specific intent to violate it. This interpretation, moreover, is eminently fair in this context, for one who engages in a regulated industry is properly held to knowledge of the regulations governing that industry. If he deliber-

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cases (see, *e.g.*, *Dennis* v. *United States*, 171 F. 2d 986 (C.A. D.C.) affirmed, 339 U.S. 162), for, as this Court has said, "willful * * * is a word of many meanings, its construction often being influenced by its context". *Spies* v. *United States*, 317 U.S. 492, 497; see also *United States* v. *Murdock*, 290 U.S. 389, 394.

[15] See *United States* v. *John Henricks, Inc.*, 388 F. 2d 677 (C.A. 7); *Riss & Co.* v. *United States*, 262 F. 2d 245 (C.A. 8); *Steere Tank Lines, Inc.* v. *United States*, 330 F. 2d 719 (C.A. 5); *Inland Freight Lines* v. *United States*, 191 F. 2d 313 (C.A. 10); *United States* v. *Lowther Trucking Co.*, 229 F. Supp. 812, 816 (N.D. Ala.); *United States* v. *Joralemon Brothers, Inc.*, 174 F. Supp. 262 (E.D. N.Y.); *United States* v. *E. Brooke Matlack, Inc.*, 149 F. Supp. 814 (D. Md.). See, also, *Abbett, Sommer & Co.* v. *Securities and Exchange Commission*, No. 23,658 (C.A. D.C.), decided, September 25, 1970, pending on petition for a writ of certiorari, No. 1158 this Term; *Tager* v. *Securities and Exchange Commission*, 344 F. 2d 5 (C.A. 2).

ately does an act which the regulations prohibit, the government should not be required to prove that he did [redacted] know that which it was his duty to know.

3. Congress considered the effect of the use of the word "knowingly" when it revised the Transportation of Explosives Act in 1960.[16] The legislative history of the revision is fully consistent with the interpretation that the statute requires only the intent to engage in certain conduct and not a specific intent to violate known regulations.

In April 1957, Senator Magnuson introduced a bill to amend the Act. Among the changes proposed was deletion of the words "whoever knowingly" and substitution of the phrase "[whoever] being aware that the Interstate Commerce Commission has formulated regulations for the safe transportation of explosives and other dangerous articles." 105 Congressional Record 6755–6756. The proposal was prompted by concern that courts would consider knowledge of the specific provisions of the pertinent regulation an element of

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[16] There were two major changes in the Act. Radioactive materials and etiologic agents (such as live viruses and bacteria) were brought within its scope. And its prohibitions were applied for the first time to private and contract carriers, as well as common carriers. H. Rep. No. 1975, 86th Cong., 2d Sess., p. 3.

Essentially the present provisions with respect to knowing transportation of explosives had been included in the 1909 codification of penal laws. 35 Stat. 1135. The legislative history of this codification gave no explanation of the "knowingly" requirement. See S. Rep. No. 10, Part 1, 60th Cong., 1st Sess., p. 23.

the offense under the statute. Its purpose was to make certain that such knowledge was not required."[17]

Senator Magnuson's bill was passed by the Senate (105 Cong. Rec. 18739–18740) and referred to the House. A staff memorandum of the House Committee on the Judiciary (reprinted in the Committee Report, H. Rep. No. 1975, 86th Cong., 2d Sess., pp. 14–19) urged deletion of the revised *scienter* requirement and resubstitution of "knowingly." The memorandum contended that the existing language, as it had been construed by the Supreme Court, required proof only of "an awareness of the commission of the unlawful act * * * but not an awareness of the existence or provisions of the law which makes the act criminal." H. Rep. No. 1975, 86th Cong., 2d Sess., pp. 17–18. The staff memorandum noted that this was the traditional requirement for offenses involving "inherent wrongs." It asserted, "in line with contemporary concepts in this field" (*Id.* at 17), that there should be no requirement of greater proof of *scienter* with respect

[17] The written "justification" for the change (reprinted at 105 Congressional Record 6755–6756) discussed this Court's decision in *Boyce* and evinced particular concern with the concurring opinion of Judge Magruder in *St. Johnsbury Trucking Co.* v. *United States*, *supra*. It also noted that the Interstate Commerce Commission had recommended simply eliminating the term "knowingly", thereby creating absolute liability. The justification expressed ~~expressing~~ the view that, because of the "added peril inherent in the transportation of the commodities concerned, statutory creation of an absolute liability does not seem unreasonable." The proposal nevertheless elected to include language the intended effect of which apparently was to retain a requirement of conscious action or inaction.

to "so-called public welfare offenses such as the present act, which * * * are made unlawful only because of an overriding social interest such as the protection of the public health and safety * * *." (*Id.* at 18).[18] And, the memorandum argued, a change in the "knowingly" terminology in Section 834 would, without apparent reason, make the *scienter* element of that section inconsistent with Sections 832 and 833, which retain that terminology.

The House Committee did re-substitute the term "knowingly." Its Report stated (*id.* at p. 2):

> The present Transportation and Explosives Act requires that a violation "knowingly" be committed before penalty may be inflicted for such violation. Under the present law there is judicial pronouncement as to the standards of conduct that make a violation a "knowing" violation. The instant bill would change substantially the quantum of proof necessary to prove a violation since it provides that "any person who being aware that the Interstate Commerce Commission has formulated regulations for the

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[18] In light of the reference in the proposed amendment to general awareness of the existence of Regulations, the memorandum contended that:

> "There is * * * reason to believe that the [Senate] bill would impose on the Government a more stringent requirement of proof than does the present law as construed by the Supreme Court, though an opinion of a very able lower appellate court judge [Judge Magruder] which has no doubt had considerable impact * * * read the statute as casting an even heavier burden on the Government. * * * [*Id.* at 17.]

By contrast, the Committee apparently felt that the new requirement was less stringent (see pp. 22–23, *infra*.)

> safe transportation of explosives and other dangerous articles" is guilty if there is a noncompliance with the regulations. Such language may well create an absolute liability for violation. * * * Since the penalties prescribed for violation of the Explosives Act are substantial and since proof required to sustain a charge of violation of such regulations under the bill would require little more than proof that the violation occurred, it is the considered opinion of the committee that such a substantial departure in present law is not warranted. It is the purpose of this amendment to retain the present law by providing that a person must "knowingly" violate the regulations.

As amended, the bill passed the House on August 23, 1960 (106 Cong. Rec. 17261–17262). The Senate concurred in the House amendments on August 26, 1960 (106 Cong. Rec. 17789), and the bill in its present form was subsequently enacted.

In this context, it is clear that enactment of the present statute was by no means an endorsement by Congress of the interpretation of the term "knowingly" suggested in *St. Johnsbury*. There is no reason to believe that the Committee did not accept the view of its staff that the present law did not require knowledge of a regulation and specific intent to violate it, notwithstanding *St. Johnsbury*. By retaining "the present law", therefore, Congress intended simply to preserve what it considered, with good reason, to be the existing traditional *scienter* requirement of awareness of the facts and intent to engage in the conduct

involved but not knowledge of the legal provisions which prohibit that conduct.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the order of the District Court should be reversed and the case remanded for further proceedings under the information.

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